

ANALYSIS OF AMENDED BILL

Franchise Tax Board

Author: Corbett Analyst: Victoria Favorito Bill Number: SB 1285
Related Bills: See Legislative History Telephone: 845-3825 Amended Date: March 24, April 1, & April 28, 2008
Attorney: Patrick Kusiak Sponsor: _____

SUBJECT: Charitable Contributions/Conservation Lands/FTB Use State-Approved Appraisal Value Or Value Of An Appraisal By Qualified Member Of Appraisal Institute To Calculate Appropriate Value of Contribution Claimed By Seller

SUMMARY

This bill would require the Franchise Tax Board (FTB) to use either the state approved appraisal or the appraisal from a qualified member of the Appraisal Foundation to determine the charitable deduction allowed for contribution of conservation land.

This bill would also require specified state agencies to develop and apply standards for the appraisals of easements in land acquisitions and are not discussed in this analysis.

SUMMARY OF AMENDMENTS

The March 24, 2008, amendments add the requirement that FTB use the state approved appraisal or an appraisal made by a licensed appraiser that is within 10% of the state-approved appraisal to determine the amount of the seller's charitable contribution. The amendments made other modifications that do not impact FTB.

The April 1, 2008, amendments specify that newly developed standards for land acquisition appraisals are subject to the approval of the Resources Agency and clarify the rules for appraisals to be used for state income tax purposes.

The April 28, 2008, amendments provide additional requirements for appraisal standards and changed the provision that would require FTB to use appraisal from an appraisal organization that is a member of the Appraisal Foundation.

This is FTB's first analysis of this bill.

PURPOSE OF THE BILL

According to the author's office, the purpose of the bill is to improve the appraisal process used by the public agencies for acquiring conservation lands.

EFFECTIVE/OPERATIVE DATE

This bill would be effective January 1, 2009, and would apply as of that date.

Board Position:	Department Director	Date
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POSITION

Pending.

ANALYSIS

FEDERAL/STATE LAW

Federal and state laws allow a charitable deduction both for personal income taxpayers and for corporate taxpayers for a qualified conservation contribution. A deduction for such a contribution is subject to certain limitations depending on the type of taxpayer, the nature of the property contributed, and the type of donee organizations.

Federal and state laws generally apply the rule that the deduction for gifts of property other than money is based on the fair market value of the property at the time of contribution. More specifically, fair market value is the starting point from which the deductible amount is determined after application of the various limitations.

Federal law contains reporting and substantiation requirements for the allowance of the deductions for noncash charitable contributions. For certain charitable contributions by individuals, corporation, partnership or S corporation, federal law requires certain substantiation requirements for deductions that exceed, in the aggregate, \$5,000. The donor must obtain a "qualified appraisal" and attach an appraisal summary to the federal return on which the deduction is first claimed.

The Pension Protection Act of 2006 (PPA) amended the Internal Revenue Code (IRC) by defining the term "qualified appraisal" as the following:

1. an appraisal that is treated as a "qualified appraisal" under regulations or other guidance prescribed by the Secretary, and
2. an appraisal conducted by a "qualified appraiser" in accordance with generally accepted appraisal standards and any regulations or other guidance prescribed by the Secretary.

The PPA also amended the IRC to provide that the term "qualified appraiser" is:

1. an individual who has earned an appraisal designation from a recognized professional appraiser organization or has otherwise met minimum education and experience requirements set forth in regulations prescribed by the Secretary,
2. an individual who regularly performs appraisals for which the individual receives compensation, and
3. an individual who meets requirements as may be prescribed by the Secretary in regulations or other guidance.

The IRC further provides that an individual will not be treated as a “qualified appraiser” unless the individual has satisfied the following:

1. the individual demonstrates verifiable education,
2. the individual has experience in valuing the type of property subject to the appraisal, and
3. the individual has not been prohibited from practicing before the Internal Revenue Service by the Secretary under § 330(c) of Title 31 of the United States Code at any time during the 3-year period ending on the date of the appraisal.

Federal law requires that taxpayers substantiate contributions of \$250 or more by a contemporaneous written acknowledgement of the contributions by the donee organizations.

California conforms to the federal rules relating to “qualified appraisals” and other documentations for certain contributions as of a specified date of January 1, 2005. California has not conformed to any of the provisions added by the PPA.

THIS BILL

For conservation lands acquired by the state, this bill would require FTB to use the following in determining the amount of charitable deduction allowed to the seller:

- the state-approved appraisal value, or
- the appraisal value from a qualified member of the Appraisal Foundation, which is within 10% of the state-approved amount.

IMPLEMENTATION CONSIDERATIONS

Implementing this bill would not significantly impact the department’s programs and operations.

OTHER STATES’ INFORMATION

The states surveyed include *Florida, Illinois, Massachusetts, Michigan, Minnesota, and New York*. These states were selected due to their similarities to California's economy, business entity types, and tax laws.

Review of *Florida* and *Illinois* laws found no comparable record keeping and substantiation requirements for charitable contributions.

Massachusetts, Michigan, Minnesota, and New York laws follow the federal rules relating to record keeping and substantiation of charitable contributions.

FISCAL IMPACT

This bill would not significantly impact the department’s costs.

ECONOMIC IMPACT

Revenue Estimate

Based on data and assumptions discussed below, the Personal Income Tax and Corporation Tax revenue loss from this bill would be as follows:

Estimated Revenue Impact of SB 1285 Effective On Or After January 1, 2009 Enactment Assumed After June 30, 2008 (\$ in Millions)			
Appraisal of Land Contribution	2008-09	2009-10	2010-11
	No change	<\$800,000	<\$800,000

This estimate does not consider the possible changes in employment, personal income, or gross state product that could result from this bill.

Revenue Discussion

The revenue impact of this bill depends on the extent to which taxpayers submit appraisals that exceed those approved by the state.

It is assumed that if taxpayers obtain a private appraisal, they will submit it only if it is higher than the state-approved one and within the 10-percent limit established in this bill. There would be a revenue loss equal to 8% of the difference between the private and the state approved appraisals. This assumes a blended 8% marginal tax rate for personal income and corporation tax filers was applied.

The October 2007 Legislative Analyst report on appraisal of resources land acquisitions listed five major acquisitions by the state since 2002. These ranged in value from \$30 million to \$150 million, with an average value of \$95 million. Assuming that one parcel is acquired annually with a state-approved value is \$95 million and the appraisal submitted by the taxpayer is \$104.5 million (\$95 million x 1.10), there would be an annual loss of about \$760,000 due to increased charitable deductions (\$104.5 million - \$95 million = \$9.5 million x 8% tax rate = \$760,000).

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